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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,736	12/21/2001	Fung-Jou Chen	KCX-484 (17155)	3665

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DORITY & MANNING, P.A.  
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EXAMINER
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STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/036,736

Applicant(s)

CHEN ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8,67-127 and 129-132 is/are pending in the application.
- 4a) Of the above claim(s) 78,87,88,98-100,111 and 122-126 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8,67-77,79-86,89-97,101-110,112-121,127 and 129-137 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/15/07 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 3/15/07 have been fully considered, and are not persuasive. Applicant argues Chen does not disclose the replacement for an absorbent core can be used for cleaning a surface. Applicant argues Chen teaches two embodiments 1) an absorbent core of an absorbent article that can be "replaced by a series of resilient basesheet layers, such as the wet resilient uncreped, through-air-dried ("UCTAD") basesheet ... and a dual-zoned absorbent web containing hydrophobic material... placed in superposed relation on the series of resilient basesheet layers. Applicant argues Chen teaches this embodiment can replace the absorbent but Chen does disclose or even suggest that this replacement for an absorbent core can be used for cleaning a surface. Applicant repeats the argument that Chen discloses that a hand towel can be made from the uncreped, non-compressively dried basesheets. However,

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in this embodiment, no multi-layer compressible substrate comprising a plurality of stacked plies for use as a hand towel is disclosed. Applicant's arguments are directed to an intended use of the claimed invention, not to the structure of the invention. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant further argues Chen does not teach abrasive particles attached to an outer cover. Applicant argues the adhesive disclosed by Chen on the base sheet does not equate to abrasive particles that facilitate scrubbing. However, Chen teaches the adhesive on the base sheet is applied in the form of a spray, swirl, dissolved adhesive, or droplets (col. 5, lines 49-57). The examiner, at least, interprets the droplets, as adhesive particles as broadly as claimed. Since no specific material or comparison is given in the claims or specification, the examiner has interpreted the term abrasive as relative to other portions of the article. In this instance, the adhesive is deemed abrasive as compared to the surrounding base sheet.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 7, 67- 71, 73, 75-77, 79-85, 92-97, 114-117, 120, 121, 127, 129-134, 136, and 137 are rejected under 35 U.S.C. 102(b) as being anticipated Chen et al. USPN 5990377.

As to claim 1, 67, 114, 120, 121, and 127, 129-132, see Abstract; col. 1, lines 20-32; col. 2, line 59 through col. 3, line 6; col. 7, lines 39-59; col. 8, lines 46-61; col. 36, line 64 through col. 37, line 16; Figures 1-3. As to the abrasive material attached to the outer cover, Chen discloses the adhesive containing regions are noticeably stiffer than the surrounding base sheet (col. 45, lines 59-60). Chen teaches the adhesive on the base sheet is applied in the form of a spray, swirl, dissolved adhesive, or droplets (col. 5, lines 49-57). The examiner, at least, interprets the droplets, as adhesive particles as broadly as claimed. In this instance the adhesive, which is attached to the outer cover, is abrasive relative to the surrounding base sheet. As to the item being used to clean a surface, this limitation is directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152

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USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

As to claims 3 and 69, see col. 9, lines 49-57.

As to claims 4 and 70, see Figure 1 and col. 3, lines 37-45.

As to claims 5 and 71, see col. 5, lines 5-15.

As to claims 7 and 73, see Figure 14.

As to claim 75, see col. 5, lines 44-48.

As to claim 76, see col. 29, lines 8-26.

As to claim 77 and 117, see col. 12, lines 24-29.

As to claim 79-81, 92, 93, 115, and 116 see Figure 1 and col. 3, line 45 through col. 4, line 48.

As to claims 82, 95, 96, and 97 see col. 4, lines 13-18 and col. 33-col. 34.

As to claim 83, see Figure 6.

As to claim 84, see col. 43, lines 5-10.

As to claim 85, see col. 21, line 65 through col. 22, line 8.

As to claim 94, see col. 34, line 47 through col. 35, line 24, where Chen discloses a latex-free embodiment.

As to claims 133, 134, 136, and 137, Chen discloses both sides of the web may be absorbent (col. 36, lines 41-49).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 6, 8, 68, 72, 74, 86, 89, 90, 91, 101-113, 118, 119, and 135 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen USPN 5990377.

As to claims 2, 6, 68, 72, 103, and 118, Chen describes an uncreped three dimensional through dried cellulosic web of bulk enhancing fibers. Chen does not specifically describe the exact number of layers of the multi-ply structure. However, Chen discloses a multi-layer structure is desired allowing better control of physical properties by tailoring the material composition of each layer (col. 3, lines 55-62). It would have been obvious to one of ordinary skill in the art to use the claimed number of plies and folded stacks as a mere modification of a specific size and shape does not patentably distinguish the claimed invention from the prior art.

As to claims 8, 74, 86, 89, 90, 91, 101, 102, and 104-113, Chen discloses the present invention substantially as claimed, see the rejection of claim 1 supra. However, Chen does not disclose the claimed absorbent capacity. Chen describes the basis weight, density and materials.

Regarding the absorbent capacity and the examiner's interpretation of the test and performance characteristics of the instant apparatus claims, when the structure recited

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in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980).

As to claim 135, Chen discloses both sides of the web may be absorbent (col. 36, lines 41-49).

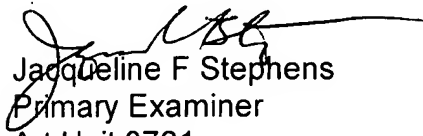
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Primary Examiner  
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March 30, 2007